

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11109-RGS

LEXINGTON INSURANCE COMPANY
AND
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH

v.

VIRGINIA SURETY COMPANY, INC.

ORDER ON
MOTION FOR RECONSIDERATION

June 8, 2007

STEARNS, D.J.

On June 7, 2007, Virginia Surety Company (Virginia Surety) filed a motion for reconsideration of the court's Order on Motion for Clarification, dated June 1, 2007 (Order of June 1). Virginia Surety contends that the court erred in determining that it lacked jurisdiction over the motion for clarification. It argues that the subject of the motion for clarification - the court's Memorandum and Order on Cross Motions for Summary Judgment - is not a final and appealable order because, *inter alia*, it does not dispose of the entire action and was not certified for appeal under Fed. R. Civ. P. 54(b). Therefore, Virginia Surety urges the court to retain at least concurrent jurisdiction over this matter.

The court's Order of June 1 should not be construed as a determination that the order on summary judgment was final and appealable. Nor should it be construed as a determination that appellate jurisdiction exists over this matter. That is an issue on which this court can not pass. Rather, it must be resolved by the Court of Appeals for the First Circuit. The court is prepared to consider the motion for clarification but it can not do so

unless Lexington and National Union withdraw the notice of appeal, or the Court of Appeals remands the matter for lack of appellate jurisdiction.

ORDER

Accordingly, the motion for reconsideration is DENIED without prejudice.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE